

# GENERAL/REQUIREMENTS

## DIVISION II - GENERAL CONDITIONS

### II.1 ABBREVIATIONS

Whenever the following abbreviations are used in the Document or on the Plans, they are to be construed the same as the respective expressions represented. When other abbreviations are used in the Document or on the plans, they will, generally, be first designated by the full title and followed by the appropriate abbreviations in parenthesis and then will appear only in the abbreviation form throughout the remainder of the specific section of the Document. The abbreviations refer to specifications, standards, or methods of the respective organizations. Abbreviations listed herein but not mentioned in the Document shall be disregarded.

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGC	Associated General Contractors of America
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institutes
ANSI	American National Standard Institutes
APWA	American Public Works Association
ARBA	American Road Builders Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society of Testing Materials
AWPA	American Wood Preservers Association
AWS	American Welding Society
AWWA	American Water Works Association
ACPA	American Concrete Pipe Association
ACPA	American Concrete Paving Association
CRSI	Concrete Reinforcing Steel Institute
CS	Commercial Standards
DFPA	Division for Product Approval of American Plywood Association
FLSA	Fair Labor Standards Act
ICBO	International Conference of Building Officials
IEEE	Institute of Electrical and Electronics Engineers
MUTCD	Manual on Uniform Traffic Control Devices
NEC	National Electrical Code
NBS	National Bureau of Standards
NEMA	National Electrical Manufacturer's Association
NESC	National Electrical Safety Code
NFPA	National Fire Protection Association
NLMA	National Lumber Manufacturer's Association
NMSA	National Metrification Standards Association

ODOT	Oregon Department of Transportation
ORS	Oregon Revised Statutes
OSHA	Occupational Safety and Health Act
PCA	Portland Cement Association
SAE	Society of Automotive Engineers
UBC	Uniform Building Code
UL	Underwriter's Laboratories, Inc.
UPC	Uniform Plumbing Code
USASI	United States of America Standards Institute
WWPA	Western Wood Products Association

The numbers and letters following the abbreviations, where used in the Document or on the Plans, denotes the respective organizations serial designation for the specification or standard to which reference is made. Unless a particular issue is designated, all references to the above specifications, standards, or methods shall, in each instance, be understood to refer to the issue in effect (including all amendments) on the date of the Advertisement for Bids.

## **II.2 DEFINITIONS**

### **II.2.A.00 ADVERTISEMENT**

The Advertisement for Bids is the public announcement, inviting proposal for work to be performed and/or materials to be furnished.

### **II.2.B.00 AS APPROVED**

The words "As Approved", unless otherwise qualified, shall be understood to be followed by the words "by the Engineer".

### **II.2.C.00 AS SHOWN**

The term "As Shown" shall be understood to be followed by the words "on the plans".

### **II.2.D.00 AWARD**

The Award is the acceptance of a Proposal by the City and the awarding of a contract.

### **II.2.E.00 BIDDER**

Wherever the word Bidder occurs in the Contract Document, the word shall signify any person, firm, partnership, venture, or corporation submitting a Proposal on the project outlined in the Contract Document.

#### **II.2.F.00 CHANGE ORDER**

A Change Order is a written order issued by the Engineer to the Contractor, covering changes in the plans, specifications, or quantities and within the scope of work included in the Contract. A Change Order may also change the scope of work or contract time.

#### **II.2.G.00 CITY**

Wherever the word City occurs in the Contract Document, the word shall signify the City of Corvallis, Oregon, acting through its duly authorized officers.

#### **II.2.H.00 CONTRACT**

The Contract is the written agreement covering the performance of the work and the furnishing of labor, materials, incidental services, tools and equipment required in the execution of the work contained in the Contract Document. It may include supplemental agreements, amending or extending the work contemplated which may be required or extending the work in an acceptable manner. Supplemental Agreements are written agreements covering all alterations, amendments, or extensions to the Contract and may include Contract Change Orders. The Contract, when fully executed, shall include the Performance and Payment Bond and such other supplemental attachments or submittals as required in the Contract Document.

#### **II.2.I.00 CONTRACT DOCUMENTS**

The Contract Documents consist of the Advertisement for Bids, Information for Bidders, the Proposal, the Bid Bond, the Contract, the Performance and Payment Bond, the General Conditions, Bid Item Descriptions, Prevailing Wage Rates, Standard Specifications, Special Provisions or Special Specifications, the Plans, including all modifications thereof, and all other materials incorporated into the Contract Document before their execution and including all of the requirements, either bound together or separate, incorporated by specific reference thereto and such other documents as the City may specify. The entire Contract Document, hereinafter referred to as the Document, forms the Contract.

#### **II.2.J.00 CONTRACTOR**

Wherever the word Contractor occurs in these Documents, the word shall signify the party or parties contracting with the City to perform the work as specified in the Document.

#### **II.2.K.00 CONTRACT TIME AND ADJUSTED CONTRACT TIME**

The Contract Time is the amount of time originally provided for the performance of the work in the Contract or the time set for completion of all work included in the Contract. The term "Adjusted Contract Time" is the Contract Time, as above stated, which has been changed for cause during the progress of the work.

### **II.2.L.00 WORK DAYS**

A working day shall be any day other than a legal holiday, Saturday, or Sunday on which the normal working forces of the Contractor may proceed with regular work for at least 6 hours toward completion of the contract.

Legal holidays shall be:

- ▶ New Years Day (January 1)
- ▶ Martin Luther King Day (Third Monday in January)
- ▶ President's Day (Third Monday in February)
- ▶ Memorial Day (Last Monday in May)
- ▶ Independence Day (July 4)
- ▶ Labor Day (First Monday in September)
- ▶ Veteran's Day (November 11)
- ▶ Thanksgiving Day (Fourth Thursday in November)
- ▶ Day after Thanksgiving
- ▶ Christmas Day (December 25)

When a holiday falls on a Sunday, the following Monday shall be deemed to be a holiday in lieu of the day observed. When a holiday falls on a Saturday, the previous Friday shall be deemed a holiday in lieu of the day observed.

### **II.2.M.00 ENGINEER**

Wherever the word Engineer occurs in the Document, the word shall signify the City Engineer or his/her designated and duly authorized representatives.

### **II.2.N.00 APPROVED EQUAL**

The term Approved Equal shall be understood to indicate the product be the same as or better than the product named in function, performance, reliability, quality, and general configuration. Determination of equality in reference to the product design requirements will be made by the Engineer. Whenever specific brand names or manufacturers name, model, or product number is called out in the specifications it shall be understood to mean that approved equal products may be accepted if approved by the engineer unless the specific item is stated as the only acceptable product.

### **II.2.O.00 EXTRA WORK**

Extra Work is any item of work not provided for in the Contract as awarded, but determined by the Engineer as essential to the completion of the Contract within the intended scope. Extra work shall be added to the Contract by a written Change Order.

### **II.2.P.00 INSPECTOR**

An Inspector is the authorized representative of the Engineer, assigned to make a detailed inspection of any or all portions of the work or materials or Contract performance.

#### **II.2.Q.00 NOTICE OR WRITTEN NOTICE**

Wherever the term Notice or Written Notice occurs in the Document, the term shall signify a written communication delivered in person or by certified mail to the individual, or to a member of the firm, or to an officer of the corporation to whom it is intended. Certified mail shall be addressed to the last address available to the person who gives the notice. The term "Notice" or the requirements to "Notify" as used in applicable State or City Statutes or Ordinances shall carry the same definition as outlined in this section.

#### **II.2.R.00 PLANS**

Wherever the term Plans occurs in the Document, the word shall signify and refer to the official plans, profiles, cross sections, elevations, details, and other working drawings, and supplementary drawings or reproductions thereof signed by the Engineer which show the location, character, dimensions, and details of the work to be performed. The Plans may either be bound in the same book with the balance of the document or bound in separate sets and are part of the total Document regardless of the method of binding.

#### **II.2.S.00 PROJECT**

Wherever the term Project occurs in the Document, the word shall signify the entire scope of work included therein together with all appurtenances and construction to be performed thereon under the Contract, or the Contract as modified.

#### **II.2.T.00 SPECIFICATIONS**

Wherever the term Specifications occurs in the Document, the term shall signify all of the terms, provisions, and requirements contained therein. Wherever standard specifications, such as those of ASTM, AASHTO, etc., or the City's Standard Specifications have been referred to, the applicable portions of such standard specifications shall become a part of the Document as completely as if the same were fully set forth and bound therein.

#### **II.2.U.00 SUBCONTRACTOR**

A Subcontractor is any individual, firm or corporation to whom the Contractor, with the written consent of the City subcontracts any part of the Contract.

#### **II.2.V.00 SUBSTANTIAL COMPLETION**

Substantial Completion shall be that degree of completion of the project, sufficient to enable the City, at its discretion, to fully use the project or the defined portion of the project for the purposes for which it was intended. The Contractor shall give written notification of Substantial Completion which shall be approved or denied by the City.

## **II.2.W.00 WORK**

Wherever the term Work occurs in the Document, the term shall signify all material, labor, tools, and all appliances, machinery, and appurtenances necessary to perform and complete everything specified in the Document or shown on the plans and such additional items of labor, materials, and equipment, not specifically indicated or described, which can be reasonably inferred as belonging to or incidental to the item described or indicated and as required by good practice to provide a complete and satisfactory project, system or structure.

## **II.3 CONTRACT DOCUMENTS**

### **II.3.A.00 INTENT OF CONTRACT DOCUMENTS**

The Contract Documents are complementary, and what is called for by any one part or section shall be as binding as if called for by all parts or sections. The intent of the Document is to include all work necessary for the completion of the Contract (except specific items to be furnished by the City or others, as specifically called for). Material or work described by words in the text, when so applied, shall have a well known technical and trade meaning and shall be held to refer to such recognized standards.

### **II.3.B.00 DISCREPANCIES, OMISSIONS, AND INCONSISTENCIES**

Any discrepancies or omissions found in the Contract Document shall be reported to the Engineer immediately. The Engineer will clarify discrepancies or omissions in writing within a reasonable time. In resolving inconsistencies among two or more sections of the Document, precedence shall be given in the following order:

- Contract
- Special Provisions
- Bid Item Descriptions
- Plans \*
- Standard Specifications
- General Conditions
- Information for Bidders

\* Figure dimensions on Plans shall take precedence over scale dimensions. Detailed plans shall take precedence over general plans.

### **II.3.C.00 REASONABLY IMPLIED WORK AND INCIDENTAL ITEMS**

Any part of the work that is not mentioned in these Specifications, but is shown on the Plans, or any part not shown on the Plans, but described in these Specifications, or any part not shown on the Plans nor described in the Specifications which is necessary or normally required as a part of such work, or is necessary or required to make each installation satisfactorily and legally operable; shall be performed by the Contractor as incidental work without extra cost to the City.

### **II.3.D.00 ALTERATIONS TO THE CONTRACT**

The City, without invalidating the Contract, may order changes in the work within the general scope of the Contract by altering, adding to, or deducting from the work, the Contract being adjusted accordingly. All such work shall be executed under the conditions of the original Contract except as specifically adjusted at the time of ordering such change.

The Engineer may order such minor changes in the work not involving extra costs and not inconsistent with the purpose of the project, but otherwise, except in an emergency endangering life or property, additions or deductions from the work shall be performed only in pursuance of an approved Change Order from the Engineer stating that the City has authorized the deduction, addition, or change and no claim for additional payment shall be valid unless so ordered. Alterations to the Contract shall have the approval of the Contractor's Surety.

If the work is reduced by alterations such action shall not constitute a claim for damages based on loss of anticipated profits.

### **II.3.E.00 CHANGE ORDERS**

Payment or credit for any alteration covered by a Change Order shall be determined by:

1. Unit prices used in the Contract Documents or agreed upon by the Contractor and the City for the alterations; or
2. Lump Sum agreement in writing between the Contractor and the City; or
3. Force Account.

### **II.3.F.00 VERIFICATION AND WARRANTY**

The Contractor shall determine the nature and location of the work, the general and local conditions and all other matters which can in any way affect the work under the Contract. Failure to make the necessary examination for this determination shall not relieve the Contractor from the obligation of the Contract.

The Contractor warrants that no verbal agreement or conversation with any officer, agent, or employee of the City or with the Engineer either before or after the execution of this Contract has affected or modified any of the terms or obligations herein contained.

### **II.3.G.00 DOCUMENT TO BE KEPT ON THE JOB SITE**

The Engineer will furnish to the Contractor, upon request and free of charge, 3 copies of the Document, excepting the Standard Construction Specifications which will be available for a charge, and 1 set of full size Plan reproductions (22-inch x 34-inch drawing). Additional copies of the Document or Plans may be obtained upon request. The Contractor shall keep 1 copy of the Document on the job site in good order available to the Engineer or his/her representatives. The Contractor shall maintain 1 copy of the Document and 1 set of the full scale Plans at the construction

site for the purpose of detailing and verifying the work as constructed and the location of all materials and equipment. This document shall be returned to the City upon completion of the project.

### **II.3.H.00 OWNERSHIP OF DRAWINGS**

All plans, drawings, specifications, and copies thereof furnished by the Engineer shall remain the property of the City. They are not to be used on other work and, with the exception of the signed Contract Document and the Standard Construction Specifications, will be returned to the City upon request. All models are or shall become the property of the City.

## **II.4 THE ENGINEER**

### **II.4.A.00 AUTHORITY OF THE ENGINEER**

The Engineer shall be the City's representative during the construction period and throughout the life of the Contract. In relation to the specific project, his/her authority and responsibility shall be limited to the provisions as set forth in the Document.

The Engineer will decide all questions which may arise as to the quantity, quality, acceptability of materials furnished and work performed, and the rate of progress of the work; all questions that may arise as to the interpretation of the Plans and Specifications; and, as to the acceptable fulfillment of the Contract on the part of the Contractor. The Engineer's estimates and decisions in these matters shall be final, binding, and conclusive upon all parties to the Contract.

It is further understood that all work to be done under the Contract will not be considered completed until it has passed the final inspection by the Engineer and is accepted by the City. It is further understood that the authority of the Engineer is such that the Contractor shall at all times carry out and fulfill the instructions and directions of the Engineer insofar as they concern the work to be done under the Contract.

The Engineer shall have the authority to reject work and materials whenever such rejection may be necessary to insure the execution of the Contract in accordance with the intent of the Document. The Engineer shall have the authority to suspend the work for causes as set forth in the Document.

Approval by the Engineer signifies favorable opinion and qualified consent but such approval will not relieve the Contractor from responsibility for errors, for improper fabrication, for nonconformance to requirements or for deficiencies within his/her control.

The Engineer will make decisions, in writing, on all claims on the City by the Contractor arising from interpretation or execution of the Contract. Such decisions shall be necessary before the Contractor can receive additional money or time extensions under the terms of the Contract.



#### **II.4.B.00 DUTIES AND RESPONSIBILITIES OF THE ENGINEER**

The Engineer will make periodic visits to the site of the project to observe the progress and quality of the work and to determine in general if the work is proceeding in accordance with the intent of the Contract Document. He/she shall not be required to make comprehensive or continuous inspections to check the quality or quantity of the work and he/she shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work. Visits and observations made by the Engineer shall not relieve the Contractor of his/her obligation to conduct comprehensive inspections of the work and to furnish materials and perform acceptable work, and to provide adequate safety precautions, all in conformance with the intent of the Contract Document.

One or more inspectors or assistants may be assigned to observe the work and to act in matters of construction under this Contract. It shall be understood that inspectors shall have the power to issue instructions and make decisions and interpretations within the limitations of authority assigned them by the Engineer and they shall apply in the same manner as if the inspection were by the Engineer himself.

#### **II.4.C.00 AUTHORITIES AND DUTIES OF INSPECTORS**

Inspectors, employed by the City and as representatives of the Engineer, are authorized to inspect and shall be permitted to inspect all work done and all materials furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication or manufacture of the material to be used.

It shall be recognized and accepted that it is the duty of the Inspector to report to the Engineer as to the progress of the work and the manner in which it is being performed, and to report to the Engineer whenever it appears that the material furnished or the work performed by the Contractor fails to fulfill the requirements of the Contract Document and to call to the attention of the Contractor any such failures.

It is agreed and understood that in case of any dispute arising between the Contractor and the Inspector as to the material furnished or the manner of performing the work, the Inspector shall have the authority to reject materials or temporarily suspend the work until the question and issue can be referred to and decided by the Engineer.

It is understood that the Inspector is not authorized to revoke, alter, enlarge, relax or release any requirement of the Contract Document, nor to approve or accept any portion of the work, nor to issue instructions contrary to the requirements of the Contract Document. Reliance by the Contractor upon any oral or written statement by the Inspector shall not relieve the Contractor of any obligation to comply with the terms of the Contract.

The performance of work under inspection shall in no way relieve the Contractor from his/her obligation to perform the same in strict accordance with the requirements of the Contract Document or to relieve them from his/her responsibility in case work is not so performed.

## **II.5. INSPECTION**

The Engineer or his/her representatives shall be allowed access to all parts of the work and to the plants of the producers and fabricators, at all reasonable times, and shall be furnished with every reasonable facility for ascertaining whether or not the work performed is in accordance with the requirements and the intent of the Contract Document. The Contractor shall furnish, at his/her own expense, such samples as are customarily required or specified herein for testing purposes.

The City shall be notified and given a reasonable opportunity to inspect all work associated with this project between the hours of 8:00 AM and 5:00 PM, Monday through Friday, excluding legal City holidays. The Contractor shall schedule their work so no element of a sequential task is either obscured by a subsequent activity or backfilled before it has been inspected. If the City is not notified by the Contractor prior to the Contractor backfilling or covering a utility, the City shall have the right to request the utility be uncovered, re-backfilled, and re-compacted at the Contractor's expense.

For non-utility work, the Contractor shall, at any time before acceptance of the work, remove or uncover such portions of the finished work as may be directed. After examination the Contractor shall restore such portions of the work to the standards required by the Specifications. Should the work thus exposed or examined prove acceptable, the uncovering or removing, the replacing of the covering, or making good of the parts removed, shall be done as "extra work." Should the work so exposed and examined prove unacceptable, the uncovering and removing, the replacing of the covering, and the making good of parts removed shall be at the Contractor's expense. Any work done, or materials used without approval by the Engineer, may be ordered removed and replaced at the Contractor's expense unless the City's representatives fail to inspect the work or materials after being given reasonable notice, in writing, that the work was performed.

When any other unit of government, political subdivision or any other public or private agency, is to pay a portion of the cost of the work covered by the Contract, its respective representatives may have the right to inspect the work. Such inspections shall in no way make any other unit of government, political subdivision or any other public or private agency a party to the Contract and shall in no way interfere with the rights of the parties of the Contract unless expressly stated in the Document.

### **II.5.A.00 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK**

All work which does not conform to the requirements of the Contract will be considered as unacceptable, unless otherwise determined acceptable under the provisions contained in the Document.

Unacceptable work found to exist prior to acceptance of or final payment for the work, shall be removed immediately and replaced by work and materials that shall conform to the Specifications or shall be remedied otherwise in an acceptable manner. This provision shall have full effect regardless of the fact that the unacceptable work may have been done or the defective material used with the full knowledge of the Inspector. The fact that the Inspector may have previously overlooked such defective work shall not constitute acceptance of any part of it.

No work shall be done without lines and grades having been given by the Engineer unless the determination of lines and grades are expressly stated otherwise. Work done contrary to or regardless of the instructions of the Engineer, or work done beyond the lines shown on the Plans or as given, or any extra work done without authority shall be considered as unauthorized and will not be paid for under the provisions of this Contract. Work so done may be ordered removed or replaced at the Contractor's expense.

The Engineer shall have authority to cause unacceptable work to be remedied or removed and replaced, and unauthorized work to be removed, and to deduct the cost thereof from any money due or to become due to the Contractor.

#### **II.5.B.00 REJECTED MATERIAL**

Any material condemned or rejected by the Engineer or his/her authorized Inspector because of the nonconformity with the Contract Document shall be removed at once from the vicinity of the work by the Contractor at his/her own expense, and the same shall not be used on any portion of the work.

#### **II.5.C.00 UNNOTICED DEFECTS**

Any defective work or material that may be discovered by the Engineer before the final acceptance of work, or before final payment has been made, or during the warranty period, shall be removed and replaced by work and materials which shall conform to the provisions of the Contract Document. Failure on the part of the Engineer to condemn or reject bad or inferior work or materials shall not be construed to imply acceptance of such work or materials.

#### **II.5.D.00 RIGHT TO RETAIN IMPERFECT WORK**

If any part or portion of the work done or material furnished under this Contract shall prove defective and not in accordance with the Contract Document, and if the imperfection in the same shall not be of sufficient magnitude or importance as to make the work dangerous or unsuitable, or if the removal of such work will create conditions which are dangerous or undesirable, the City shall have the right and authority to retain such work but shall make such deductions in the Final Payment therefore as may be just and reasonable. The final authority for decisions called for in this section shall rest with the Engineer.

#### **II.5.E.00 CONSTRUCTION STAKES, LINES, AND GRADES**

Construction stakes, lines and grades shall be furnished and established by the Engineer unless stated otherwise in the Special Provisions. The Contractor shall notify the Engineer in writing at least 2 working days in advance of operations that require staking. These stakes and marks shall constitute the field control by and in accordance with which the Contractor shall establish other necessary controls and perform the work. The Contractor shall be held responsible for the preservation of all stakes and marks and if any of the construction stakes or marks shall have been carelessly or willfully destroyed or disturbed by the Contractor, said construction stakes, lines, and grades shall be replaced by the Engineer and the cost of replacing them will be charged against the Contractor and shall be deducted from the payment for the work.

In the event that the Special Provisions or Bid Item descriptions identify construction stakes, lines, and grades as the Contractor's responsibility, survey control for the project will be established by the City as shown on the drawings. The Contractor shall be responsible for transferring line and grade to the work, and to protect the survey control from loss or damage. Survey control lost or destroyed due to the Contractor's operations or negligence will be replaced at the Contractor's expense. Relocation of existing control within the project limits to outside the project work area shall be the responsibility of the Contractor.

#### **II.5.F.00 PLANS AND WORKING DRAWINGS**

The Plans will show details of all structures, lines, grades, typical cross sections, location, and design of all structures as required for the project. The Plans shall be made available to the Contractor in accordance with the conditions previously stated herein, or as otherwise expressly stated in the Contract Document, and the Contractor shall keep at least 1 set of plans available on the work site at all times during the progress of the work.

The Plans shall be supplemented by such other working drawings as are necessary to adequately control work. Working drawing, as required, shall be furnished by the Contractor and shall consist of such detailed plans as may be required to adequately control the work and are not included in the Plans furnished by the City.

The Contractor shall submit, in triplicate, working drawings and/or catalog cuts of fabricated or manufactured items, including mechanical and electrical equipment required for the construction, to the Engineer for his/her approval. All working drawings must be approved by the Engineer and such approval shall not operate to relieve the Contractor of any of his/her responsibility under the Contract for the successful completion of the work. Working drawings shall be submitted in sufficient time to allow the Engineer not less than 10 working days for examining the drawings.

The working drawings shall be accurate, distinct, and complete and shall contain all required information, including satisfactory identification of items, units, and assembly in relation to and in conformance with the Contract Document. Working drawings or catalog cuts shall be submitted only by the Contractor and he/she shall indicate by a signed stamp on the drawings, or other approved means, that he/she has checked the working drawings or catalog cuts and that the work shown is in accordance with the Contract requirements and has been checked for dimensions in relationship with the work of all other trades involved. Submitting incomplete or unchecked working drawings will not be acceptable and working drawings which, in the opinion of the Engineer, clearly indicate that they have not been checked by the Contractor, will be considered as not complying with the intent of the Contract and will be returned to the Contractor for resubmission in the proper form.

When the working drawings or catalog cuts are approved by the Engineer, 2 sets of prints will be returned to the Contractor marked "approved" or "approved as corrected," and dated and signed by the Engineer.

The review and approval of such drawings and catalog cuts by the Engineer shall not relieve the Contractor from responsibility for correctness of dimensions, fabrication details and space requirements, or for deviations from the Contract Document unless the Contractor has called

attention to such deviations in writing by a letter accompanying the drawings and the Engineer approves the change or deviations in writing at the time of submission. Nor shall review and approval by the Engineer relieve the Contractor from the responsibility for errors in shop or working drawings. When the Contractor does call such deviations to the attention of the Engineer, the Contractor shall state in writing whether or not such deviations involve any deduction or extra cost adjustment. Any work done or any material ordered prior to the approval of the working drawings or catalog cuts shall be at the sole risk of the Contractor.

The Contract price shall include the cost of furnishing all working drawings and the Contractor shall be allowed no extra compensation of Contract Time for the preparation of such drawings.

The Engineer will furnish, with reasonable promptness, additional instructions by means of drawings, or otherwise if, in the Engineer's opinion, such are required for the proper execution of the work. All such drawings and instructions will be consistent with the Contract.

#### **II.5.G.00 CONFORMITY WITH PLANS AND SPECIFICATIONS**

All work performed and all material furnished shall be in reasonably close conformity with the lines, grades, cross sections, dimensions, and material requirements including tolerances shown on the Plans or indicated in Contract Document. The Engineer will determine the limit of the reasonably close conformity in each individual case, and his/her judgment will be final and conclusive.

In the event the Engineer finds the materials or the finished product in which the materials are used not within reasonably close conformity with the Contract Documents, but that reasonably acceptable work has been produced he/she shall then make a determination if the work shall be acceptable and remain in place. In this event the Engineer will document the basis of the acceptance by Contract modification which will provide for an appropriate adjustment of the Contract price for such work or materials as he/she deems necessary to conform to his/her determination based on engineering judgment.

In the event the Engineer finds the materials or the finished products in which the materials are used for the work performed are not within reasonably close conformity with the Contract and have resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor.

#### **II.5.H.00 QUALITY CONTROL AND ACCEPTANCE TESTING**

All quality control and acceptance testing required under this contract shall be performed by the City, unless otherwise stated in the Special Provisions or Bid Item descriptions. The Contractor shall be responsible for scheduling and coordination of sampling by the City's independent testing laboratory. The Contractor shall provide a minimum of 2 working days written advance notice to the laboratory for testing and sampling. Test results will be made available to the Contractor when requested. The Contractor shall be responsible for any additional sampling and laboratory service costs that result from work that does not meet the specifications.

## **II.6 THE CONTRACTOR AND CONTRACTOR'S EMPLOYEES**

The Contractor shall give the work the attention necessary to facilitate the progress thereof and shall cooperate with the Engineer, his/her inspectors, and other Contractors and Utilities in every way possible.

The Contractor shall give the Engineer such facilities and assistance in establishing lines, grades, and points as may be required and the Engineer's marks and stakes must be carefully preserved.

The Contractor shall furnish the Engineer every reasonable assistance necessary for obtaining such information as he/she may desire respecting the nature and the manner of the work. The Engineer shall be allowed access, at all times, to the books and records of the Contractor and the Contractor shall furnish the Engineer with all necessary data for the determination of the actual cost of all or any part of the work.

The Contractor shall employ only competent, skillful personnel to do the work and whenever any person shall appear to be incompetent or to act in a disorderly or improper manner, that person shall be immediately removed from the work.

### **II.6.A.00 SUPERINTENDENCE**

The Contractor shall have as his/her agent, a competent Superintendent or Foreman on the work at all times during the progress of the construction who is capable of reading and thoroughly understanding the Plans and Contract Document, and who has thorough experience in the type of work being performed. The Superintendent shall receive instructions from the Engineer and the Superintendent shall have full authority to execute orders or directions of the Engineer without delay and to promptly supply such materials, equipment, tools, labor, and incidentals as may be required for performance of the work. Such superintendence shall be furnished irrespective of the amount of work subcontracted.

The Superintendent or Foreman, or other duly authorized representative of the Contractor, shall represent the Contractor in all directions given to them by the Engineer. Directions of major importance will be confirmed in writing and any direction will be so confirmed upon written request from the Contractor.

### **II.6.B.00 SUBCONTRACTING**

Unless otherwise directed, the Contractor shall within 15 days excluding Saturdays, Sundays and legal holidays, after the execution of the Contract and before awarding any Subcontracts to other persons for any portion of the project, notify the Engineer in writing of the names of the Subcontractors that he/she proposes to use. The Contractor shall not employ any Subcontractor that the Engineer may object to as unqualified for the specific area of work to be subcontracted.

The Contractor agrees that he/she is as fully responsible to the City for the acts and omissions of the Subcontractors and of persons either directly or indirectly employed by them as he/she is for the acts and omissions of persons directly employed by them as it relates to the Contract. Nothing

contained in the Contract shall create a contractual relationship between a Subcontractor and the City.

#### **II.6.C.00 COOPERATION BETWEEN CONTRACTORS**

The City reserves the right at any time to contract for and perform other or additional work on or near the work covered by the Contract. When separate Contracts are let within the limits of any one Contract area or within adjacent areas, each Contractor shall conduct his/her work so as not to interfere with or hinder the progress or completion of the work being performed or to be performed by any other Contractor or Utility. Contractors working on the same Project shall cooperate with each other and with the Utilities as directed.

Each Contractor involved shall assume all liability, financial or otherwise, in connection with his/her Contract and shall protect and hold harmless the City from any and all damages or claims that may arise because of inconvenience, delay or loss experienced by them because of the presence and operation of other Contractors working on or near the same project.

The Contractor shall arrange his/her work and shall place and dispose of the materials being used so as not to interfere with the operation of the other Contractors on or near the same project. He/she shall join his/her work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others. In the case of a dispute arising between two or more Contractors engaged on work in the same or adjacent areas as to the respective rights of each, the Engineer will determine the matters at issue and define the respective rights of the various interests involved in order to secure the completion of all parts of the work in general harmony and with satisfactory results, and his/her decision shall be final and binding on all parties concerned.

#### **II.6.D.00 NOTICES TO AND BY CONTRACTOR**

Any written notice to the Contractor which may be required by law or by the provisions of the Contract Document may be served on said Contractor or his/her representatives either personally or by mailing to the address given in the Contract or by leaving the same at said address.

Whenever in the Specifications, the Contractor is required to notify the Engineer concerning the progress of the work or concerning any complaint which he/she may have to make, or for any other reason, it shall be understood that such notification is to be made in writing, delivered to the Engineer or his/her representative in person, or mailed to the Office of the Engineer.

#### **II.6.E.00 MAINTENANCE OF WORK DURING CONSTRUCTION**

Except as otherwise provided elsewhere in the Contract Document, the Contractor shall maintain the work during construction. This maintenance shall constitute continuance and effective work prosecuted day by day with adequate equipment and forces to the end that the project is kept in satisfactory condition at all times.

All costs of maintenance work during construction shall be included in the unit price bid on the various pay items. The Contractor will not be paid an additional amount for such work, unless otherwise specified.

If the Contractor, at any time, fails to comply with these provisions, the Engineer will immediately notify the Contractor of such noncompliance. If the Contractor fails to remedy unsatisfactory maintenance within 24 hours after receipt of such notice, the Engineer may immediately proceed to maintain the project and the entire cost of this maintenance will be deducted from monies due or to become due the Contractor at the rate of 200% of the City's actual force account costs.

#### **II.6.F.00 PERFORMANCE AND PAYMENT BOND**

The successful Bidder shall file with the City at the time of the execution of the Contract, a Performance and Payment Bond on the form included in the Document, or on a form which shall conform to it in content and format. The Bond shall be in the full amount of the Contract price as security for the faithful performance of the Contract and the payment for all persons supplying labor and all material for the construction of the work and to cover all guarantees or warranties against defective workmanship or materials, or both, for a period of 1 year after the date of final acceptance of the work by the City. The Surety company furnishing this Bond shall have a sound financial standing, their record of service shall be satisfactory to the City, and they shall be authorized to do business within the State of Oregon.

The Attorney-in-Fact (Resident Agent) who executes this Performance and Payment Bond in behalf of the Surety company must attach a copy of their Power-of-Attorney as evidence of their authority. A Notary shall acknowledge the power as of the date of the execution of the Surety bond which it covers.

### **II.7 LEGAL RESPONSIBILITIES**

#### **II.7.A.00 LAWS TO BE OBSERVED**

The Contractor shall keep fully informed of all Federal and State laws, all local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affects those engaged or employed on the work, or which in any way affects the conduct of the work. The Contractor shall at all times observe and comply with all such laws, ordinances, regulations, orders, and decrees, and shall protect and indemnify the City and its representatives against any claims or liabilities arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by Contractor or Subcontractor, suppliers of materials or services, or others engaged by the Contractor or the employee of any of them.

#### **II.7.B.00 PERMITS AND LICENSES**

All permits, licenses, and inspection fees necessary for the prosecution and completion of the work shall be secured and paid for by the City unless otherwise specified in the Bid Item descriptions or Special Provisions, or in other applicable sections of the Contract Document.



## **II.7.C.00 REQUIREMENTS OF OREGON LAW FOR PUBLIC CONTRACTS**

The provisions required by the Oregon Revised Statute (ORS), Chapter 279C, as amended or superseded, including the latest additions or revisions relating to Public Contracts and Purchasing are made a part of this Contract as completely as if the same were fully set forth herein.

## **II.7.D.00 ENVIRONMENTAL CONTROL**

### **II.7.D.01 POLLUTION PREVENTION, CONTROL AND ABATEMENT**

The Contractor's attention is called to the ORS, Chapters 468A, and 468B which sets forth requirements relative to the prevention, control, and abatement of water pollution, air pollution, etc. The Contractor shall conduct his/her operation in conformity to the applicable section of said Statutes, laws amendatory thereof, and all pertinent regulations of the State Department of Environmental Quality, other agencies of the State and Federal government having authority over or control of such environmental requirements, as well as to ordinances or resolutions enacted or adopted by the City. It is public policy that all practicable means be exercised to prevent, control and abate the pollution of water of the State and to maintain reasonably purity of the air by the control or abatement of air pollution, the control and abatement of noise pollution or any other form of pollution as included in the ORS.

### **II.7.D.02 HAZARDOUS WASTE AND HAZARDOUS SUBSTANCES**

The Contractor shall comply with all applicable Federal, State, and local laws and regulations as they pertain to the storage, handling, management, transportation, disposal and documentation of:

Hazardous substances (as defined in ORS 465.200)

Oil and hazardous materials (as defined in OAR 340-108-0002)

Hazardous waste (as defined in 40 CFR 261 and OAR 340-101-0033)

Solid Waste (as defined in 40 CFR 258, ORS 459, and OAR 340)

### **II.7.D.03 FUEL STORAGE**

Any fuel to be stored on-site shall be stored in compliance with the Uniform Fire Code, NFPA standards, and all other applicable laws.

### **II.7.D.04 HAZARDOUS CONTAMINATION**

If, during construction, unanticipated hazardous substances that threaten the health and safety of workers, the public, or the environment are discovered or released, the Contractor shall: (1) Immediately remove all affected employees and secure the area to prevent access, and (2) Notify the Engineer immediately and provide written notification within 24 hours, setting forth a description of the incident.

#### II.7.D.05 POLLUTION CONTROL MEASURES

As a minimum, the Contractor shall take the following measures:

- ▶ Allow no pollutant of any kind (e.g., petroleum products or fresh concrete) to come in contact with an active flowing stream.
- ▶ Promptly correct or repair operational procedures, leaks, or equipment problems that may cause pollution at the project site. If soils or other media become contaminated as a result of operational procedures or equipment problems, remove and dispose of them according to applicable laws.
- ▶ Allow no release to the environment of petroleum products, solvents, or other agents used to clean asphalt paving equipment.
- ▶ Do not bury, dump, or discharge material wastes or unused materials at the project site, unless otherwise approved by the Engineer.
- ▶ Limit water leakage from trucks carrying saturated soils to less than 1 gallon per hour before allowing them to leave the project site.
- ▶ Comply with the erosion and sediment control requirements of Federal, State, and local guidelines, permits, and specifications.

#### II.7.D.06 PROTECTION OF FISH, WILDLIFE, AND PLANTS

The Contractor shall comply with the laws of the Oregon Department of Fish and Wildlife, National Marine Fisheries Service and U.S. Fish and Wildlife Service, and the rules and practices developed through the Oregon Plan for Salmon and Watersheds. The Contractor shall conduct operations to avoid any hazard to the safety and propagation of fish and shellfish in the waters of the State.

#### II.7.E.00 SAFETY

The Contractor will be solely and completely responsible for conditions of the job site, including safety of the work. This requirement will apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable State, County, and local laws, ordinances and codes, and to the current safety regulations as set forth in the Oregon Safety Codes adopted and published by the Workmen's Compensation Board, Salem, Oregon.

The Contractor shall also comply with "U.S. Department of Labor Occupational Safety and Health Act," the "Construction Safety Act" administered by the U.S. Department of Labor, and the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, except where these are in conflict with State laws, in which case the more stringent requirement shall be followed.

The Contractor shall maintain at his/her office, or other well known place at the job site, all articles necessary for giving first aid to the injured, and shall establish the procedure for the immediate removal to the hospital or a doctor's care of any persons who may be injured on the job site. The Contractor shall have at the job site at all times when work is proceeding, a person trained in first aid.

The duty of the Engineer to conduct construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's safety measures in, on, or near the construction site. In the event that the Engineer becomes aware of unsafe conditions, it shall be his/her obligation to report such unsafe conditions or practices to the Contractor and to the proper administrating agency.

If death or serious injuries or serious damages are caused, the Contractor shall report said accident to the Engineer immediately by telephone or messenger. In addition, the Contractor must promptly report in writing to the Engineer, all accidents whatsoever arising out of, or in connection with, the performance of the work, whether on or adjacent to the site, giving full details and statements of witnesses.

If any claim is made by anyone against the Contractor or any Subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the Engineer, giving full details of the claim.

#### **II.7.F.00 RESPONSIBILITY OF CONTRACTOR TO ACT IN AN EMERGENCY**

In case of an emergency which threatens damage or loss of property and/or the injury or the safety of life, the Contractor shall act without previous instruction from the City or Engineer as the situation will warrant. The Contractor shall notify the Engineer immediately thereafter. Any claim for compensation by the Contractor, together with substantiating documents in regard to expense, shall be submitted to the City through the Engineer, and the amount of compensation shall be determined by agreement.

#### **II.7.G.00 SANITARY PROVISIONS**

The Contractor shall observe all rules and regulations of the State and local health officials and shall take such precautions as are necessary to avoid creating conditions which are not sanitary. Sanitary conveniences conforming to State and local codes shall be erected and maintained by the Contractor at all times while personnel are employed on the work. The use of such sanitary conveniences shall be strictly enforced.

#### **II.7.H.00 PUBLIC SAFETY AND CONVENIENCE**

The Contractor shall be responsible for all damages to property, injury to person, and loss, expense, inconvenience, and delay that may be caused by or that may result from any act, omission, or neglect of the Contractor, his/her Subcontractors, or the employees of either in the performance of the work to be done under the Contract.

The Contractor shall at all times so conduct his/her work as to insure the least possible obstruction or hazard to traffic. The convenience of the general public and the residents, and the protection of person and property is of prime importance and shall be provided for by the Contractor in an adequate and satisfactory manner.

The Contractor shall conduct the work without closing existing public roads, unless expressly provided for in the Contract Document. When such closures of public highways, roads or streets are

allowed, it shall be done only after giving the appropriate notices, obtaining the appropriate permits and with the approval of the Engineer.

Entrances to residences, business places, farms, orchards, and driveways of all kinds shall not be blocked for more than a few hours, and only after the express approval of the Engineer, or as otherwise provided for in the Document.

No work which interferes or conflicts with traveled roadways shall, at any time, be commenced or performed until a plan for the satisfactory handling of traffic at the place concerned, has been submitted by the Contractor and approved by the Engineer. Approval by the Engineer is tacit only and shall not relieve the Contractor of his/her full responsibilities under the Contract.

Where abrupt drop-offs occur or other hazards are created, the Contractor shall provide warning devices, visible by day and by night, delineating the hazard and warning traffic of its existence.

Where the plans call for facilitating public traffic by part-width construction with one-way traffic, and when the Contractor resorts to one-way traffic procedures, the Contractor shall facilitate the safe passage of public traffic past such affected sections of road by providing for alternating one-way traffic control. Under these conditions, the Contractor shall furnish signs, lights, barricades, flagmen, pilot cars and pilot car operators to direct and handle the alternating one-way traffic as specified. Notwithstanding the above provisions, the Contractor shall open the public roadway as quickly as possible for the passage of any and all emergency vehicles and public transit vehicles.

In providing for the safe movement of all traffic, the Contractor shall provide all necessary traffic control devices. All traffic control devices shall comply with the requirements set forth in the Manual on Uniform Traffic Control Devices for Streets and Highways, latest edition, U.S. Department of Transportation, and as approved for use in Oregon by the Oregon Transportation Commission.

Should the Contractor fail to furnish protective and directional measures as herein prescribed, the Engineer may direct the Contractor's attention to such failure and the Contractor shall immediately undertake such corrective or remedial action as is proper. The responsibility for making provisions for traffic and for providing protective and directional measures shall lie solely with the Contractor.

In the event that the Contractor does not furnish protective and directional control measures as above described and herein described, the Engineer shall cause such devices to be placed and measures taken to adequately protect the public safety. The City may bill the Contractor at the cost of 2 times (200%) the City's actual force account costs. When necessary, the City may deduct the amount owed from any payments due or coming due to the Contractor; however, this provision does not in any way relieve the Contractor from the responsibilities required and set forth in the Document.

### **II.7.I.00 PROTECTION & RESTORATION OF PROPERTY AND LANDSCAPE**

The Contractor shall be responsible for the preservation of all public and private property and shall protect carefully from disturbance or damage, all land monuments and property marks until the Engineer has witnessed or otherwise referenced their location, and shall not move them or damage until directed.

The Contractor shall be responsible for all damage or injury to property of any character, resulting from any act, omission, neglect, or misconduct in his/her manner or method of executing the work, or due to defective work or materials.

When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work, or in consequence of the nonexecution thereof by the Contractor, he/she shall restore, at his/her own expense, such property to a condition equal to or better than that existing before such damage or injury was done by repairing, rebuilding, or otherwise restoring as may be directed, or he/she shall make good such damage or injury in an acceptable manner. Damage to private property by the Contractor shall be restored to the property owner's satisfaction and a copy of the written satisfaction shall be transmitted to the Engineer.

Land irrigation, drainage facilities and growing crops shall be protected from damage. The Contractor shall perform his/her operations at such times and in such manner as not to interfere with the use thereof and right thereto. The Contractor shall anticipate the conditions which may arise to such facilities and crops as they may affect the performance of his/her work and shall have made consideration in his/her bids for any delays, inconveniences and damages which may occur.

In applying the provisions above stated, the repairing, rebuilding or replacement of damaged property shall be understood to include the providing of any temporary facilities that may be needed to maintain normal service until the required repairing, rebuilding, or replacing is accomplished.

These provisions shall apply to the repairing, rebuilding, or replacing of pipes, conduits, sewers, water and gas lines and to other underground utilities or structures or overhead structures, land monuments and property marks, mail and newspaper boxes, irrigation facilities, crops and all other real or personal, private and public property whether shown on the plans or not. It shall be the Contractor's responsibility to ascertain the existence and location of all properties and facilities which may be subject to damage by reason of his/her operation.

### **II.7.J.00 CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES**

At points where the Contractor's operations are adjacent to properties of railway, gas, telephone, cable television and power companies or other utilities or adjacent to other property, damage to which might result in considerable expense, loss or inconvenience, work shall not be commenced until all arrangements necessary for the protection thereof have been made.

The Contractor shall cooperate with the owner of any utility line or facilities in their removal and rearrangement operations in order that these operations may progress in a reasonable manner,

that duplication of any rearrangement work may be reduced to a minimum, and that services rendered by those parties will not be unnecessarily interrupted.

In the event of interruption to City or franchise utility services as a result of accidental breakage or as a result of being exposed or unsupported, the Contractor shall promptly notify the proper authority and cooperate with said authority in the restoration of service. If City utility service is interrupted on the private side of the meter, repair work shall be continuous until service is restored. Repair work required on the City side of the meter shall be done by City crews. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the City.

In the event that the Contractor encounters City utility service lines that interfere with excavating, or trenching, or in any other manner affects the conduct of the work, he/she may request in writing to the City Engineer, that the service be relocated by City crews at the Contractor's expense. This provision in no way relieves the Contractor of his/her responsibility to locate all of the utilities and to exercise care in protecting the utility. The City, or its authorized agents, shall not be responsible to the Contractor for damages as a result of the underground utilities not shown on the Plans.

The Contractor shall replace, at his/her own expense, any and all existing utilities structures or shall pay for replacement of any other existing utilities or structures removed or damaged during construction, unless otherwise provided for in the document or approved by the Engineer.

The Contractor shall make every reasonable effort to locate all underground utilities prior to commencing work. A "ONE-CALL" SYSTEM for notifying public and private utility agencies has been established in the Benton and Linn County areas. Calls should be made at least 48 hours prior to commencing work or excavating, excluding Saturdays, Sundays, and legal holidays.

#### **II.7.K.00 PATENTED DEVICES, MATERIAL, AND PROCESSES**

If the Contractor employs any design, device, material, or process covered by letters of patent or copyright, he/she shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor and his/her Surety shall indemnify and hold harmless the City, or any of the officials, officers or employees thereof, from any and all claims for infringement by reason of the use of any such patented design, device, material, or process, or any trademark or copyright, and shall indemnify the City for any costs, expenses and damages which it may be obliged to pay by reason of any infringement, at any time during the prosecution or after the completion of the work.

#### **II.7.L.00 UNFORSEEN DIFFICULTIES**

The Contractor shall protect his/her work and materials from damages due to the nature of the work, elements, carelessness of other Contractors, or from any cause whatever until the completion and acceptance of the work. All loss or damages arising out of the nature of the work to be done under this Contract, or from any unseen obstruction or defect which may be encountered in the prosecution of the work, or from the action of the elements, shall be sustained by the Contractor.

#### **II.7.M.00 TRESPASS**

The Contractor shall be solely responsible for any trespass upon adjacent property or injury thereof, resulting from or in connection with his/her operations. He/she shall be liable for any claims that may be made on account of the felling of trees or the deposit of debris or encroachment of any kind upon private property.

#### **II.7.N.00 USE OF EXPLOSIVES**

When the use of explosives is necessary for the prosecution of the work, the Contractor shall exercise the utmost care not to endanger life or property, including new work. The Contractor shall be responsible for all damage resulting from the use of explosives. All explosives shall be stored in a secure manner in compliance with all laws and ordinances, and all such storage places shall be clearly marked. Where no local laws or ordinances apply, storage shall be provided satisfactory to the Engineer and in general not closer than 1,000-feet from the road or from any building or place of human occupancy.

The Contractor shall notify each public utility company having facilities in proximity to the site of the work of his/her intention to use explosives. Such notice shall be given at least 48 hours, not including Saturdays, Sundays or holidays, in advance to enable the companies to take such steps as they may deem necessary to protect their property from injury.

A permit issued by the City shall be required for the use of any explosive within the City and the Contractor shall comply with all provisions of said permit.

#### **II.7.O.00 CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT**

If the work should be stopped under an order of any court or other public authority for a period of 3 months, through no act or fault of the Contractor or of anyone employed by them; or if the Engineer should fail to issue any estimate for payment within 30 days after it is due; or if the City should fail to pay the Contractor within 30 days after the time specified in "Partial Payment" any sum certified by the Engineer, then the Contractor may, upon 15 days written notice to the City and the Engineer, stop work or terminate this Contract, and recover from the City payment for all work executed and any loss sustained upon any plant or material and reasonable profit and damages, unless said default has been satisfactorily remedied within said time.

#### **II.7.P.00 CORRECTION OF DEFECTIVE WORK AFTER FINAL ACCEPTANCE**

The Contractor hereby agrees to make, at his/her own expense, any repairs or replacements necessitated by defects in materials or workmanship supplied by them that become evident within 1 year after the date of written notice of Final Acceptance of the project by the City, unless otherwise specified. The Contractor further assumes responsibility for a similar 1 year warranty for all work and material provided by Subcontractors or manufacturers of packaged equipment components. The Contractor also agrees to hold the City harmless from claims of any kind arising from damage due to said defects. The Contractor shall make all repairs and replacements promptly upon receipt of written order for same from the City. If the Contractor fails to make the repairs and replacement

promptly, the City may do the work, and the Contractor and his/her Surety shall be liable for the cost thereof. The end of the Warranty Period shall not exclude the Contractor's responsibility for materials or work later found to be not completed or not as represented.

#### **II.7.Q.00 PAYMENT OF BILLS BY CONTRACTORS**

The Contractor shall promptly make payment for labor, materials, supplies, and provisions at such times that they become due and payable to all persons supplying the Contractor or his/her Subcontractors with labor, service, materials, supplies, and provisions for the prosecution of the work provided for the Contract and he/she shall not permit any lien or claims to be filed or prosecuted against the City its officers, agents, or employees for any account of any labor, materials, supplies, and provisions furnished.

In the event that the Contractor fails, neglects, or refuses to make prompt payment of any claim for labor, materials, supplies and provisions furnished by any person in connection to the Contract as said claim becomes due, whether said labor, materials, supplies and provisions be performed for said Contractor or for his/her Subcontractor, then, the City may pay such claims to the person(s) furnishing such labor, materials, supplies, or provisions and charge the amount thereof against the funds due or to become due the Contractor by reason of the Contract. Payment of any such claims in the manner herein authorized will not relieve the Contractor or his/her Surety from his/her obligations with the respect to unpaid claims.

#### **II.7.R.00 PERSONAL LIABILITY OF PUBLIC OFFICIALS**

In carrying out any of the provisions of the specifications, or in exercising any power or authority granted to them by the Contract or within the scope of the Contract, there shall be no liability upon the Engineer, or his/her authorized representatives, either personally or as officials of the City, it being always understood that in all such matters they act solely as the agents and representatives of the City.

#### **II.7.S.00 NO WAIVER OF LEGAL RIGHTS**

The City shall not be precluded or estopped, by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefor, from showing the true amount and character of the work performed and materials furnished by the Contractor, nor from showing that any such measurement, estimate or certificate is untrue or is incorrectly made, nor that the work or materials do not conform, in fact, to the Contract. The City shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate, and payment in accordance therewith, from recovering from the Contractor or his/her Surety, or both, such damages as it may sustain by reason of his/her failure to comply with the terms of the Contract. Neither the acceptance by the City or by any representative of the City, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the City shall operate as a waiver of any portion of the Contract or of any power herein reserved, or of any right to damages herein provided. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.



### **II.7.T.00 CONFLICT OF INTEREST**

It is understood and agreed that no gift, loan or other thing of value has been or will be given or offered to any employee, agent or officer of the City in connection with the award or performance of this Contract. It is further understood and agreed that no employment will be made to, and no renting, leasing or purchasing of equipment, supplies, or materials will be arranged or made with or through any employee, agent or officers of the City by the Contractor.

## **II.8 PROGRESS OF THE WORK**

### **II.8.A.00 PRECONSTRUCTION CONFERENCE**

Before work shall be started and materials ordered, the Contractor shall meet and consult with the Engineer and such other persons as may be affected by the work at a time and place mutually agreed upon relative to materials, equipment, and all arrangements for prosecuting the work.

### **II.8.B.00 SCHEDULE**

3 working days prior to the Preconstruction Conference, the Contractor shall submit to the Engineer a critical path schedule of expected progress of the work under the Contract showing approximately the date on which each part or division of the work is expected to be started and finished.

### **II.8.C.00 TRAFFIC CONTROL PLAN**

3 working days in advance of the Preconstruction Conference, the Contractor shall submit a Traffic Control Plan to the Engineer. The Traffic Control Plan shall be in accordance with the Manual on Uniform Traffic Control Devices, latest edition, and the City of Corvallis' Engineering Policy on Traffic Control for Construction Zones, latest edition. Work shall not begin until the Traffic Control Plan has been approved by the Engineer. Acceptance of the Traffic Control Plan is at the sole discretion of the Engineer.

### **II.8.D.00 COMMENCEMENT AND PERFORMANCE OF WORK**

The Contractor shall not commence work until the Engineer has issued a written Notice-to-Proceed.

From the time of commencement of the work as set forth in the Contract Document, to the time of completion, the Contractor shall provide adequate labor, materials, and equipment, and the work shall be performed as vigorously and as continuously as weather and other conditions will permit and always in accordance with a schedule which will insure completion within the specified time limit. There shall be no voluntary suspension or slowing of operations without the prior approval of the Engineer. Should operations be discontinued, the Contractor shall notify the Engineer at least 24 hours in advance of resuming operations. The work shall not resume until permitted or directed by the Engineer.

If it appears to the Engineer that the rate of progress being made is not such that it will insure the completion of work within the specified Contract time, it shall be within the authority of the Engineer to require the Contractor to provide additional equipment and personnel and to take such other steps as may be necessary to insure completion as specified.

#### **II.8.E.00 RESTRICTED CONSTRUCTION DATES**

If the construction site (including staging) is located in an area which will interfere with or negatively impact scheduled City events, it will be the Contractor's responsibility to secure these areas for safe public occupancy, and no construction activities shall be performed during these events. All days in which the Contractor can not proceed with regular work at least 6 hours toward completion of the contract shall be treated as a non-working day. Scheduled City events include but are not limited to:

<u>SCHEDULED EVENT</u>	<u>DATE</u>	<u>CONTACT</u>
Dad's Weekend	First Weekend in February	737-6872
Mom's Weekend	First Weekend in May	737-6872
Red White and Blues Festival	July 3rd & 4th	754-6624
Crazy Days	July 8th - 10th	754-6624
Da Vinci Days	Third Weekend in July	757-6363
Hoop Jam	Second Weekend in August	757-1909
Folklife Festival	Third Weekend in August	754-3601
Fall Festival	Last Weekend in September	752-9655
Christmas Parade	First Friday After Thanksgiving	753-9018
Downtown Holiday Shopping	November 11th Through January 4th	Store Owners
Riverfront Farmer's Market	Saturday's, 9am to 1pm	752-1510
OSU Sporting Events	Ongoing	737-2547

#### **II.8.F.00 PROSECUTION OF THE WORK**

It is expressly understood and agreed that the time of beginning, rate of progress, and time of completion of the work are of the essence of the Contract. The work shall be prosecuted at such time, and in or on such parts of the project as may be required, to complete the project as contemplated in the Contract Document and within the approved construction schedule.

The Contractor shall perform the work and take such precautions as are necessary to complete the project so all work will be in conformance with the Contract Document, and within the Contract time approved construction schedule.

If the Contractor desires to carry on work at night or outside the regular working hours (8:00 AM - 5:00 PM Monday through Friday, excepting Holidays), he/she shall submit a request for approval of the Engineer. If approved, the Contractor shall allow ample time to enable satisfactory arrangements for examining and inspecting the work in progress. If granted permission, the Contractor shall light the different parts of the work in a manner satisfactory to the Engineer, and shall comply with all regulations of the City, the State, or other public bodies having jurisdiction.

##### **II.8.F.01 EXTRA WORK**

Any work required to carry out the intent of the contract by changes not clearly indicated in the Contract Document, or which cannot be reasonably implied from the intent and

meaning of the contract shall be considered extra work. No extra or additional work shall be performed by the Contractor, except in an emergency endangering life or property, unless in pursuance of a written Change Order.

#### **II.8.G.00 OVERTIME WORK BY CITY EMPLOYEES**

Whenever the Contractor, or his/her Subcontractor, is approved by the Engineer to work on a Saturday, Sunday, or legal holiday or longer than the eight-hour work shift on a regular working day, such work shall be considered as Overtime Work. An Inspector, and such other personnel as the Engineer deems necessary, shall be present at the work during all hours of such overtime work. The Contractor shall reimburse the City for the full amount of the straight time, plus overtime costs and other employee benefit costs, for all City employees who are required to work overtime hours because of the Contractor's or Subcontractor's election. The Contractor does hereby authorize the City to deduct such costs from the amount due or to become due to them.

Overtime due to special construction problems will not be charged if the Engineer determines that the overtime is mutually beneficial and justified.

#### **II.8.H.00 ASSIGNMENT, SUBLETTING, SPECIALTY ITEMS, AND DIRECT PERFORMANCE OF CONTRACT**

The Contractor agrees not to assign, transfer, convey, or otherwise dispose of the Contract or his/her right, title or interest therein, either in whole or in part, or his/her power to execute such Contract to any person, firm, or corporation without consent in writing from the City.

No portion of the Contract shall be subcontracted or performed by other than the Contractor's own organization except with the written consent of the City. Requests for permission to subcontract any portion of the Contract or to have any of the work performed by others than his/her own organization shall be in writing and accompanied by a showing that the organization which will perform the work is particularly experienced and equipped for such work.

Written consent to assign, transfer, convey, subcontract or otherwise dispose of any portion of the Contract or to have any portion of the work performed by others than the Contractor's own organization shall not be construed to relieve the Contractor or his/her Surety of any part of his/her responsibility under the Contract or for the fulfillment of the Contract.

#### **II.8.I.00 SUBSTITUTION OF METHODS AND EQUIPMENT**

When the methods and equipment to be used by the Contractor in accomplishing the construction are not prescribed in the Contract, the Contractor is free to use any methods or equipment that he/she demonstrates will accomplish the Contract work in conformity with the requirements of the Contract, to the satisfaction of the Engineer.

When the Contract specifies that the construction be performed by the use of certain methods and equipment, such methods and equipment shall be used unless otherwise specifically authorized by the Engineer. If the Contractor desires to use a method or type of equipment other than those specified in the Contract, he/she may request authority from the Engineer to do so. The request shall

be in writing and shall include a full description of the methods and equipment proposed to be used and an explanation of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing construction work in conformity with the Contract requirements. If, after trial use of the substituted methods or equipment, the Engineer determines that the work produced does not meet Contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining construction with the specified methods and equipment. The Contractor shall remove the deficient work and replace it with work of specified quality, or take such other corrective action as the Engineer may direct. No change will be made in basis of payment for the construction items involved nor in Contract time as result of authorizing a change in methods or equipment under these provisions.

#### **II.8.J.00 SUSPENSION OF WORK**

Pursuant to sections on the Authority of the Engineer and the Authority and Duties of Inspectors, the Engineer and Inspectors have authority to suspend the work wholly, or in part, for cause. The Engineer will have the authority to suspend the work wholly, or in part, due to failure of the Contractor to correct conditions unsafe for the workmen, the general public or the City's employees; for his/her failure to carry out provisions of the Contract; for his/her failure to carry out orders; for such periods as the Engineer deems necessary due to conditions considered unsuitable for the performance of the work; or for any reason deemed to be in the public interest.

If the Contractor voluntarily suspends his/her operations because of seasonal conditions or other unsuitable conditions, an order to suspend the work may not be required or issued. However, in all cases of suspension of construction operations, the work shall not again be resumed until permitted or directed by the Engineer. The Engineer shall be notified of the intent to resume operations a minimum of 24 hours in advance of resuming operations.

At the commencement of and during any suspension of the work, the Contractor shall take every precaution to prevent any damage or deterioration of the work. The Contractor shall be responsible for the work during suspension the same as though its performance had been continuous and without interferences.

#### **II.8.K.00 MAINTENANCE DURING SUSPENSION**

Pursuant to the provisions above and other terms of the Contract, the Contractor shall be responsible for the care of the work performed.

#### **II.8.L.00 WAIVER OF CLAIMS**

The Contractor's voluntary or involuntary suspension or slowdown, with or without the approval of the Engineer, and suspension of the work ordered by the Engineer, shall not furnish grounds for claims by the Contractor for damages, or extra compensation for idle equipment or labor. No allowance or compensation will be made on account of such suspensions of work except as provided above and as provided in the following subsections.

The Contractor will be responsible for damage to the work as provided in the subsections defining the Contractor's responsibilities, that may occur during suspensions of work the same as though the damage had occurred while the work was in progress.

#### **II.8.M.00 CONTRACT TIME FOR COMPLETION OF WORK**

Inasmuch as delays in the performance of the work will inconvenience the public, obstruct traffic, interfere with business and commerce, may be expensive to the public and may increase the cost to the City, it is essential and in the public interest that the work be pursued vigorously to completion.

The period of time allowed for the performance of work under the Contract or prescribed for completion of the Contract will be set forth in the Proposal and Contract and will be known as the Contract Time, as defined.

The Contract Time will be expressed in one or the other of the following ways:

WORKDAYS--Every day except Saturdays, Sundays, and legal holidays.

FIXED DATE--The calendar day, month and year on which the work shall be completed and found acceptable under final inspection by the Engineer; subject to exclusions herein given.

The Contract Time will be subject to adjustment during the progress of work, as set forth herein. Contract Time which is thus adjusted will become the Adjusted Contract Time.

The Contractor shall complete the work called for under the Contract within the Contract Time or Adjusted Contract Time, as applicable.

#### **II.8.N.00 EXCLUSIONS FROM ELAPSE OF CONTRACT TIME**

With reference to the Contract Time originally given in the Proposal and Contract, irrespective of the way in which it is expressed, certain days will not be charged against the elapse of Contract Time and will be excluded in the count thereof. These exclusions will comprise the days, to the nearest half day when the Contractor is prevented from performing any work under the Contract for one or another of the following causes or reasons:

1. Act of God -- An Act of God is to be construed to mean an earthquake, flood, cloudburst, cyclone, tornado, hurricane, or other cataclysmic phenomenon of nature.
2. Epidemics, quarantine restrictions, strikes, freight embargoes, and acts of the public enemy.
3. Periods when the work is temporarily suspended upon written order of the Engineer.

## **II.8.O.00 PROGRESS REPORTING**

The Contractor shall submit a progress report and schedule to the Engineer on Monday of each week. The progress report and schedule shall indicate a current representation of the expected start and finish of the various parts of work under the contract, the number of working days used during the previous week, causes for any delays, and the estimated date of completion. If the work is behind the previously submitted schedule, the Contractor shall submit, in writing, a plan acceptable to the Engineer for completing the work by the end of the contract time or adjusted contract time.

The progress report and schedule will be reviewed by the Engineer by the following Wednesday and approved or rejected. The Engineer will provide to the Contractor each week, a statement showing the number of workdays charged to the contract time, or to the adjusted contract time, for the preceding week and the number of working days remaining unused. Said statement shall be deemed delivered when served on the Contractor. If the Contractor is in disagreement with the time charged, the Contractor shall file a written protest with the Engineer within 5 working days after delivery of the statement. The Contractor's written protest shall set forth the facts, in detail, upon which the protest is based. Failure to submit such protest within 5 days shall constitute the Contractor's approval of the number of days charged against the contract time for each week covered in the statement. Written protests will be reviewed by the Engineer. The Engineer will then make a final determination as to the number of work days charged to the contract time.

## **II.8.P.00 ADJUSTMENT OF CONTRACT TIME**

Any Contract Time originally given in the Proposal or Contract, will be subject to adjustment during the progress of the work at the written request of the Contractor, either by increase or decrease, for those bona fide causes beyond the control of the Contractor and which the Engineer determines as actually affecting the time necessary for completion of work under the Contract. The Contractor's request for Adjustment of Contract Time shall be in writing with the consent of the Surety endorsed thereon.

Any Adjustment of Contract Time shall be that which the Engineer determines to be justified and his/her decision in the matter shall be final. The Contractor will be advised of the Engineer's decisions and of any Adjusted Contract Time resulting therefrom.

In considering Adjustments of Contract Time, the Engineer will rule out shortage or inadequacy of labor and equipment, negligence or fault of the Contractor, and other deficiencies or lacks which are within the purview of the Contractor's control or responsibility. Causes that will be given consideration as to their effect on the time actually necessary for completion of the work and in justifying the Adjustment of Contract Time include, but are not limited to, the following:

1. Errors, changes, or omissions in the Plans or quantities, or errors or changes in the Specifications of the Contract.
2. Failure of the City, its representatives, or its other Contractors to act promptly in carrying out obligations and duties.

3. Failure of the City to submit the Contract and Bond to the Contractor for execution within the time stated.
4. Performance of Extra Work.

The Contractor's plea that insufficient time was specified in the Proposal and Contract is not a valid reason for the adjustment of Contract Time.

It is understood and agreed that an Adjustment of Contract Time, as herein provided, shall be the Contractor's sole remedy for any delay in completion of the project arising from causes beyond the control of the Contractor, and that in no event shall the Contractor be entitled to collect or recover any damage, loss or expense incurred by reason of such delay.

#### **II.8.Q.00 UTILITIES**

##### **II.8.Q.01 LOCATING UTILITIES**

The locations of existing utilities shown on the Plans are based on available information and are not guaranteed to be accurate or complete. The Contractor is responsible for all notifications required of excavators by the Oregon Utility Notification Center and for verifying the location of all existing utilities.

##### **II.8.Q.02 CONTRACTOR RESPONSIBILITIES**

The Contractor shall be responsible to coordinate, with utility owners, all necessary adjustments of utilities with project construction. The Contractor shall take all necessary precautions to prevent disturbing the utilities so that utility owners and users are caused a minimum of inconvenience. All work required by the Contractor to coordinate the temporary or permanent utility adjustments shall be incidental to the work being performed and no additional time or compensation shall be granted.

When the Contractor's operations could cause damage or inconvenience to railway, telegraph, telephone, television, power, oil, gas, water, sewer, or irrigation systems, the operations shall be suspended until all arrangements necessary for the protection of these utilities and services have been made by the Contractor. All costs to relocate or reschedule the Contractor's work during utility relocations shall be incidental to this contract.

The Contractor shall be solely and directly responsible to the owner and operators of such properties for any damage, injury, expense, loss, inconvenience, delay, suits, actions, or claims of any character brought because of injuries or damage which may result from the construction operations under this contract. Neither the owner nor its officers or agents shall be responsible to the Contractor for damages as a result of the Contractor's failure to protect utilities encountered in the work.

#### **II.8.R.00 FAILURE TO COMPLETE ON TIME AND LIQUIDATED DAMAGES**

It is agreed by the parties to the Contract that in case the work required under the Contract is not completed within the applicable Contract Time or within the applicable final Adjusted

Contract Time, if any, damage will be sustained by the City, and if it will be impracticable and difficult to ascertain and determine the actual damage that the City will sustain in the event of and by reason of such delays, it is agreed that the Contractor will pay to the City, not as a penalty, but as liquidated damages the per diem amount set forth in the Contract and/or any modification thereof as given in the Contract Documents for each and every day, as pertinent, elapsed in excess of the Contract Time or the final Adjusted Contract Time applicable to the work required under the Contract.

Permitting the Contractor to continue the work shall in no way operate as a waiver on the part of the City of any of its rights under the Contract.

Payment of liquidated damages shall not release the Contractor from obligations in respect to the fulfillment of the entire Contract, nor shall the payment of such liquidated damages constitute a waiver of the City's right to collect any additional damages which it may sustain by failure of the Contractor to carry out the terms of his/her Contract, it being the intent of the parties that said liquidated damages be full and complete payment only for failure of the Contractor to complete the work on time.

In the event of termination and cancellation of the Contract, and if the work is not finally completed by other means on or prior to the original or Adjusted Contract Time, liquidated damages under this subsection shall accrue until such date as is reasonably necessary to complete the work after such termination and cancellation.

The above provisions of this subsection may be separately applied to one or more of the parts of the whole of the work, in which case the Special Provisions will set forth the Contract Time allowed for each, and the amount of Liquidated Damages applicable thereto.

#### **II.8.S.00 TERMINATION AND CANCELLATION OF CONTRACT BY THE CITY**

If the Contractor should be adjudged bankrupt, or if a general assignment for the benefit of his/her creditors is made, or if a receiver should be appointed on account of his/her insolvency, or if he/she should persistently or repeatedly refuse or should fail to supply enough properly skilled workmen or proper materials for the efficient prosecution of the project, or if he/she should fail to make prompt payment to Subcontractors or for material or labor, or disregard laws, ordinances, or the instructions of the Engineer, or otherwise be in substantial violation of any provision of the Contract, then the City, upon certification of the Engineer that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the Contractor and his/her Surety 7 days written notice, terminate the employment of the Contractor and take possession of the premises and of all materials, tools, and appliances thereon, as well as all other appurtenant materials and equipment whether on the premises or not, for which the Contractor has received partial payment and finish the work by whatever method it may deem expedient. In the event such action as indicated above is taken by the City, the Contractor or his/her Surety, shall provide the Engineer with immediate and peaceful possession of all of the said materials, tools and appurtenances located on the premises, as well as all other materials whether on the premises or not on which the Contractor has received any partial payment. Further, the Contractor shall not be entitled to receive any further payment until all of the work is completed. On completion of the work, determination shall be made by the Engineer of the total amount of the Contract, had the Contractor themselves completed the work. If the difference between said total amount and the sum



of all amounts previously paid to the Contractor, which difference will hereinafter be called the "unpaid balance," exceeds the expense incurred by the City in completing the work, including expense for additional managerial and administrative services, such excess will be paid to the Contractor, with the consent of the Surety. If, instead, the expense incurred by the City exceeds the unpaid balance, the amount of the excess shall be paid to the City by the Contractor or his/her Surety.

The expense incurred by the City as herein provided, and the damage incurred through the Contractor's default, shall be as determined and certified by the Engineer.

In addition to and apart from the above mentioned right of the City to terminate the employment of the Contractor, it is expressly understood that the Contract may be terminated at the election of the City for any willful failure or refusal on part of the Contractor to faithfully perform the Contract. Neither the Contractor or his/her Surety shall be relieved from damages or losses suffered by the City on account of the Contractor's said breach of Contract.

It is understood and agreed that the City may, at its discretion, avail itself of any or all of the above rights or remedies and that its invoking of any one of the above rights or remedies will not prejudice or preclude the City from subsequently invoking any right or remedy set forth above or elsewhere in the Contract.

#### **II.8.T.00 CITY'S RIGHT TO TERMINATE FOR CONVENIENCE**

City may terminate the contract in whole or in part if the City determines that termination of the contract is in the best interests of the public.

City will provide the Contractor and the Contractor's Surety 7 days prior, written notice of a termination for public convenience. After such notice, the Contractor and the Contractor's Surety shall provide the City with immediate and peaceful possession of 1) the project site and premises; and; 2) materials located on and off the project site and premises for which the Contractor received progress payment, if any. Compensation for work terminated by the City under this provision shall be made according to the terms of these special provisions. In no circumstances shall Contractor be entitled to lost profits due to termination.

Action Upon Termination: Upon receiving a notice of termination and except as directed otherwise by the City, Contractor shall immediately cease placing further subcontracts or orders for materials, services or facilities. In addition, Contractor shall terminate all subcontracts or orders to the extent that they relate to the work terminated, and with the prior approval of the City, settle all outstanding liabilities and termination settlement proposals arising from the termination of said constructs and orders.

As directed by the City, Contractor shall, upon termination, transfer title and deliver to the City all project documents, information and other property that, if the contract had been completed, would be required to be furnished to the City.

Upon termination, Contractor shall take any action necessary or that the City may direct for the protection and preservation of the work and any other property related to the contract that is in the possession of Contractor and in which the City has any interest.

#### **II.8.U.00 RIGHT OF THE CITY TO DO WORK AT CONTRACTOR'S EXPENSE**

If the Contractor should neglect to prosecute the work properly or fail to perform any provision of the Contract, the City, 3 days after written notice to the Contractor, may, without prejudice to any other remedy it may have, make good such deficiencies and deduct the cost thereof to be billed at 200% from the payment then or thereafter due the Contractor.

#### **II.8.V.00 RIGHT-OF-WAY AND ACCESS DELAYS**

If the performance of the Contractor's work is delayed as a result of the failure of the City to make available to the Contractor necessary rights-of-way, or City owned, or City controlled materials sources, the use of which is offered to the Contractor, access to or rights of occupancy of buildings and other properties which the Contractor is required to enter or to disturb under Contract requirements, such delays will be taken into consideration in the adjusting of Contract Time, provided, however, that if the Special Provisions give a definite date by which any such delay will terminate, only said delay or part thereof which occurs after said date will be considered in the adjustment of Contract Time; provided, further, that any delay resulting from access or rights of occupancy shall not constitute grounds for any claim or recovery of any damages, loss or expense incurred by reason of such delay, and that the consideration of any adjustment in Contract Time shall constitute the Contractor's sole remedy therefor.

#### **II.8.W.00 OTHER CONTRACTS**

The City reserves the right to let other Contractors in connection with this work. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his/her work with theirs.

If any part of the Contractor's work depends, for proper execution or results, upon the work of any other Contractor, the Contractor shall inspect and promptly report to the Engineer any defects in such work that render it unsuitable for such proper execution and results. His/her failure to so inspect and report shall constitute an acceptance of the other Contractor's work as fit and proper for the reception of his/her work, except as to defects which may develop in the other Contractor's work after execution of his/her work.

#### **II.8.X.00 USE OF PREMISES**

The Contractor shall confine his/her equipment, the storage of materials, and the operation of his/her workmen to limits shown on the Plans or indicated by law, ordinances, permits, or directions of the Engineer, and shall not unreasonably encumber the premises with his/her materials.

The Contractor shall provide, at his/her own expense, the necessary rights-of-way and access to the work which may be required outside the limits of the City's property. In the event that the Contractor shall require the use of property other than that owned or controlled by the City, he/she shall provide a copy of the expressed written permission from the property owner for said uses. The Contractor shall be totally responsible and shall indemnify the City against all claims for damages resulting from use of said other property.

## **II.8.Y.00 TEMPORARY UTILITIES**

The Contractor shall make his/her own arrangements for obtaining necessary utilities, such as water under pressure, electrical power, gas, and so forth, for the construction and he/she shall pay all costs therefor. All temporary facilities and utilities shall be removed at the completion of the work unless otherwise directed by the Engineer.

## **II.8.Z.00 SUBSTANTIAL COMPLETION DATE**

The Engineer may at his/her sole discretion, issue a written Notice of Substantial Completion for the purpose of establishing the starting date for specific equipment guarantees or warranties, and to establish the date that the City will assume the responsibility for the cost of operating such equipment. Said notices shall not be considered as Final Acceptance of any portion of the work or relieve the Contractor from completing the remaining work within the specified time and in full compliance with the Contract and the Document.

## **II.9 PAYMENT**

### **II.9.A.00 GENERAL**

Nothing contained in the Contract Documents shall be construed to affect the right, hereby reserved, to reject the whole or any part of the aforesaid work should such work be later found not to comply with the provisions of the Contract. All estimated quantities of work for which partial payments have been made are subject to review and correction on the Final Pay Estimate. Payment by the City and acceptance by the Contractor of partial payments based on periodic estimates of quantities of work performed shall not, in any way, constitute acceptance of the estimated quantities used for computing the amounts of the partial payments.

### **II.9.B.00 PAYMENT FOR EXTRA WORK**

#### **II.9.B.01 GENERAL**

Any work necessary or required to carry out the intent of these Contract Documents by changes clearly not indicated in the Document or which cannot reasonably be implied from the intent and meaning of the Contract shall be paid for at the unit price agreed to in accordance with the provisions of the Contract. If this extra work cannot be classified under any of the items for which unit prices are listed in the Contractor's Proposal, it shall be paid for as extra work at the rate agreed to in writing between Contractor and the City prior to the time of commencing such extra work. Payment shall be determined by one or a combination of the following pricing agreements: Lump Sum, Unit Price, or Force Account.

#### **II.9.B.02 FORCE ACCOUNT (TIME AND MATERIALS)**

If the Engineer directs that the work be done on a Force Account basis, then the Contractor shall furnish labor, equipment, and materials necessary to complete the work in a satisfactory manner and within a reasonable period of time. For the work performed, payment will be made for the documented actual cost as described herein.

## II.9.B.02.1 ALLOWED FORCE ACCOUNT REIMBURSEMENTS

### II.9.B.02.1.a LABOR

Labor costs will include actual payroll costs for direct labor, including foremen, who are directly assigned to the Force Account work on the project. Non-direct labor costs, including superintendence, shall be considered part of the mark up set out in Section II9.B.02.1.e.

Actual payroll costs include wages, fringe benefits as established by negotiated labor agreements, labor insurance, and labor taxes as established by the law. No other fixed labor burdens will be considered unless approved, in writing, by the City.

### II.9.B.02.1.b MATERIALS

The cost of materials delivered and used on the designated work shall be at invoice or the lowest current price at which materials are locally available and delivered to the job in the quantities involved, plus sales tax and the cost of freight, delivery, and storage.

If, in the opinion of the Engineer, the cost of materials is excessive or the Contractor does not furnish satisfactory evidence of the cost of such material, then the cost shall be deemed to be the lowest current wholesale price for the quantity concerned delivered to the work site less trade discount.

The City reserves the right to furnish such materials and equipment as it deems expedient and the Contractor shall have no claim for profit or added fees on the cost of such materials and equipment furnished by the City.

### II.9.B.02.1.c EQUIPMENT

The Contractor will be paid for the use of equipment having a rental or equivalent rental rate in excess of \$100. Equivalent rental rates shall be determined using the current edition of the "Rental Rate Blue Book" as published by Ironmax, Inc.

The rental time to be paid for equipment on the work site shall be the time the equipment is in productive operation on the extra work being performed. The rental time shall also include the time required to move the equipment to the work site and return it to its original location, if the equipment is used solely for the extra work.

The rental or equivalent rental rates allowed for equipment will in all cases be understood to cover all fuel, supplies, repairs, and renewals. No further allowances will be made for those items unless the City's advance agreement to that effect is obtained. Rental and equivalent rental rates shall not exceed the current rental rates prevailing in the locality.

### II.9.B.02.1.d ADDITIONAL COSTS

The Contractor will be paid for the additional cost for Performance and Payment Bond or other bonding as required and approved by the City. The Contractor will also

be paid for the additional cost of insurance (other than labor insurance) as required and approved by the City.

#### II.9.B.02.1.e FIXED FEES

For computing the costs for Force Account work, there shall be added the following fixed fees for the Contractor or Subcontractor actually performing the work:

A fixed fee of 20% of the cost of items identified in II.9.H.01.1  
LABOR.

A fixed fee of 15% added to the cost of items identified in II.9.H.01.2  
MATERIALS and II.9.H.01.3 EQUIPMENT.

A fixed fee of 10% added to the cost of items identified in II.9.H.01.3  
ADDITIONAL COSTS.

An additional fixed fee of 10% shall be allowed the Contractor for the administrative handling of portions of the work that are performed by an approved Subcontractor; however, no additional fixed fee will be allowed for the administrative handling of work performed by a Subcontractor unless by written permission from the City. The added fixed fee shall be considered to be full compensation covering the costs of general supervision, overhead, profit, and all other expenses incurred in connection with the force account work.

#### II.9.B.02.2 DAILY WORK REPORT

In order to be paid for extra work, the Contractor must submit a work report(s) in a format approved by the Engineer for each day that Force Account Work is done. Daily report sheets shall be signed by the Contractor or his/her authorized agent. The daily report shall itemize the material used and shall cover direct cost of labor and the charges for equipment rental, whether furnished by the Contractor, Subcontractor, or others and it shall provide names, identifications and classifications of workmen, hourly rate of pay, the hours worked, and the size, type, and identification number of equipment and the hours operated. Failure to complete and submit the form(s) for City approval no later than the first working day following the performance of said work will result in the Contractor's costs for extra work being disallowed.

Material equipment rental charges shall be substantiated by valid copies of vendor's invoices. Such invoices shall be submitted with the daily report sheet or, if not available, they shall be submitted with the next subsequent daily report sheet.

#### II.9.B.02.3 PAYMENT OF FORCE ACCOUNT WORK

To receive partial payment and/or final payment for Force Account work, the Contractor shall submit, in a manner approved by the Engineer, detailed and documented verification of the Contractors and any of his/her Subcontractors actual costs involved in Force Account work pursuant to the issuance of an approved Change Order. Such costs shall be submitted with the first Pay Request following completion of the work, but no later than 30 days after said work has been

performed. No payment will be made for work billed and submitted to the Engineer after the 30 day period has expired.

#### **II.9.B.02.4 RECORD KEEPING**

The Contractor shall maintain his/her records in such a manner as to provide a clear distinction between the direct cost of work paid for on a Force Account basis and the cost for other operations. The City, upon written notice to the Contractor, may examine the Contractor's records for the purpose of determining how the costs have been derived and charged to the project.

#### **II.9.C.00 FINAL PAYMENT**

When all work included in the Contract has been completed, the Contractor shall so notify the Engineer and shall request final payment. The Contractor shall submit with this request his/her estimate of the final pay quantities. The Engineer will prepare the Final Pay Estimate of the amount due the Contractor under the Contract, less any amount to be withheld by the City to insure guarantees as may be provided in the document, and submit it to the Contractor along with a Certification of Work Completion and Acceptance. Upon approval of this Final Pay Estimate by the Contractor, the City shall pay to the Contractor all monies remaining due them under the provisions of the Contract.

Furthermore, final payment will not be made to the Contractor until he/she files with the City the executed Wage Certification Form certifying that he/she has paid not less than the prevailing rate of wages as required by ORS 279C.845.

#### **II.9.D.00 CLAIMS FOR WORK NOT COVERED IN THE CONTRACT**

In any case where the Contractor deems additional compensation is due them for work or materials not clearly covered in the Contract or not ordered by the Engineer according to provisions of Section II.03.D.00, ALTERATIONS TO THE CONTRACT, the Contractor shall notify the Engineer, in writing, of his/her intention to make claim for such compensation before he/she begins the work on which he/she bases the claim in order that such matters may be settled, if possible or other appropriate action promptly taken.

#### **II.9.E.00 NO WAIVER OF RIGHTS**

Neither the inspection by the City, nor any payment for, or acceptance of, the whole or any part of the work by the City, nor any extension of time, nor any possession taken by the City shall operate as a waiver of any provisions of the Contract, or any power herein reserved to the City or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

#### **II.9.F.00 ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE**

The acceptance of the final payment by the Contractor shall release the City and the Engineer, as agent of the City, from all claims and all liability to the Contractor for all things done or furnished in connection with the Contract, and every act of the City and others relating to or arising out of the

work. No payment, final or otherwise, shall operate to release the Contractor or his/her Surety from the obligations under the Contract and the Performance and Payment Bond as therein provided.

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